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Rights and Duties of Citizenship.

FROM STATE PAPERS.

U.S. Legation

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RIGHTS AND DUTIES OF CITIZENSHIP.

FROM STATE PAPERS.

Rights and Duties Reciprocal:—There cannot be a nation without a people. The very idea of a political community, such as a nation is, implies an association of persons for the promotion of their general welfare. Each one of the persons associated becomes a member of the nation formed by the association. He owes it allegiance and is entitled to its protection. Allegiance and protection are, in this connection, reciprocal obligations. The one is a compensation for the other; allegiance for protection and protection for allegiance.

(Chief Justice WAITE).

The right to be acknowledged as a citizen of the United States must be held as a high privilege and a precious right.

If the citizen, on the one side, has rights which he may claim at the hands of the Government, on the other side there are imperative duties which he should perform toward that Government. If, on the one hand, the Government assumes the duty of protecting his rights and privileges, on the other hand the citizen is supposed to be ever ready to place his fortune and even his life at its service, should the public necessities demand such a sacrifice.

(Mr. FISH, Secretary of State, June, 1873).

Citizenship of the United States, it is my duty to say, is a high privilege, and.....confers great prerogatives, whose maintenance, when they are honestly procured and faithfully exercised, the United States will exert its fullest powers to vindicate..... But the enjoyment of these prerogatives is conditioned on the performance of the correlative duties of

loyal service, of love to the country of [birth or] adoption, of support of the country when she needs support, and the payment of the just taxes that country imposes upon all its citizens. When the performance of that duty ceases, then cease the prerogatives of the citizenship on which they are conditioned.

(Mr. BAYARD, Secretary of State, March 20th, 1886).

[See further under head of *Passports*.]

Abandonment:—Citizenship involves duties and obligations as well as rights. The correlative right of protection by the Government may be waived or lost by long-continued avoidance and silent withdrawal from the performance of the duties of citizenship as well as by open renunciation.

(Mr. FISH, Secretary of State, October 30th, 1871).

A citizen of the United States may forfeit the protection of its Government abroad by making his permanent residence abroad and avoiding performance of the duties of citizenship.

(Mr. FISH, Secretary of State, April 28th, 1873).

When a citizen of the United States goes abroad without any intention to return, he forfeits, with the abandonment of his country, all rights to the protection of its Government.

(Mr. FISH, Secretary of State, June 12th, 1873).

The forms of application presented and furnished by the State Department for a passport by a native being submitted to Mr., [in the employ of an English firm in London,] he stated his unwillingness and inability to subscribe to the averments of his being domiciled in the United States or having a permanent residence there, or that he intended at any time to return to the United States with the purpose of residing and performing the duties of citizenship therein.

Thereupon I declined to issue him a passport regarding all the above recited averments to be essential regulations, prescribed

after careful consideration and in the high discretion of the Executive, as interpreted by the Department of State.

It is well that our countrymen should be reminded from time to time of the mutual dependency and correlation of allegiance and protection, and that each is the natural compensation for the other. When a man voluntarily leaves his native country, settles himself in a foreign community, embarks his property in business under its laws, making his permanent domicile there, and furthermore expressly declares he has no intention to return to his native country to resume his residence and perform the duties of citizenship, he has practically abandoned his allegiance, and with it the right to claim protection from the Government from which he has so alienated himself.

(Mr. BAYARD, Ambassador to Great Britain,
September 26th, 1893).

Distinction between Legal Status and Right to Protection :—Between the legal status of citizenship and the right to continued protection during indefinitely prolonged sojourn abroad, the executive authority of the United States draws a clear distinction in exercising its statutory discretion to issue passports as evidence of the right to protection. The relation of the citizen to the state being reciprocal, embracing the duties of the individual, no less than his rights, the essential thing to be determined is the good faith with which the obligations of citizenship are fulfilled.

The best evidence of the intention of the party to discharge the duties of a good citizen is to make the United States his home ; the next best is to shape his plans as to indicate a tolerable certainty of his returning to the United States within a reasonable time.

(Mr. ADEE, Assistant Secretary of State, April 28th, 1893).

Special Classes, (Missionaries etc.) :—The presumption of abandonment of nationality by long absence abroad is rebutted by a proof that such a residence was that of a missionary who

never intended to relinquish his nationality or his purpose finally to return home.

(Mr. EVERETT, Secretary of State, February 5th, 1853).

The case of an American missionary in a country where the United States possesses extraterritorial jurisdiction presents certain exceptional features which may well invite relaxation of requirements not obviously necessary in their regard.

In China, as in other extraterritorial countries, the fact of continued sojourn of a native-born citizen of the United States does not alone create a *prima facie* presumption of intent to acquire political domicile there. Short of actual naturalization as a Chinese subject, the individual is and remains under the jurisdiction of the United States: and no conflicting claim to exercise jurisdiction over him is possible on the part of China. Moreover, the peculiar conditions under which American missionaries reside in China, and their self-sacrificing devotion to the calls of higher duty may, and indeed often do, bring about an abandonment of a fixed domicile in the United States without the acquisition of a domicile in the country of residence. Such men are for the most part agents of American societies, and when they are native-born citizens the requirement that they shall prove retention of a permanent domicile in the United States is a needless hardship, because often impracticable of fulfilment by a conscientious missionary whose residence in China has been taken up, in fact, with a purpose to pursue there his life work; so, also, as to the intention to return to the United States, which in most cases may amount merely to a floating and contingent purpose.

Mr. is a native-born citizen, employed in China by an American society under circumstances which make his retention of domicile in the United States impracticable and his purpose of return indefinite, but which do not of themselves withdraw him from American jurisdiction. If, as the Department infers, the difficulty on Mr.'s part is conscientious,

he may now make an entirely honest and acceptable declaration in the line of these suggestions which will satisfy you of his bona fides. Such explanatory statements would certainly be more acceptable and more truthfully indicative of the relation which should exist between the citizen and the state than the declaration that he does not intend to return to the United States except against his will, "as forced to do so by sickness or family." Mr.'s own good judgment should suggest to him that persistence in such a declaration as he makes is not only unwise but needless, and is a dangerous approach to the border line of a formal renunciation of his rightful status as a loyal citizen.

(Mr. FOSTER, Secretary of State, July 18th, 1892).

The facts of his business employment abroad may importantly modify this aspect of his case if the firm he serves..... be the foreign branch of a business concern having its headquarters in the United States.

(Mr. ADEE, Assistant Secretary of State,
April 28th, 1893).

In those Oriental countries where the rule of extraterritoriality prevails, the test of citizenship found in a continued connection with business interests having their root in the United States may have its weight, but there are other tests.....having equal or perhaps greater value in showing a bona fide conservation of the American character and an effort to uphold the good repute of our country abroad. It should not be difficult in the light of common sense to distinguish between merely selfish residence abroad, under circumstances which involve a practical renunciation of all home ties, and the adoption of a course which essentially requires the individual's nationality to be asserted. Men who, are by their employment and conduct "exercising an influence on civilization and giving strength to the position of our country" in Japan, need not fear inquiry

into the good faith wherewith they retain a distinctive American nationality.

(Mr. GRESHAM, Secretary of State, August 22nd, 1893).

Naturalized Citizens :—All naturalized citizens of the United States while in foreign countries are entitled to and shall receive the same protection of person and property which is accorded to the native born citizens (Revised Statutes, Sec. 2000). The United States have treaties, however, with several countries regulating and controlling the status of naturalized citizens of the United States on their return to their native land.

Naturalization in the United States, without an intent to reside permanently therein, but with a view of residing in another country, and using such naturalization to evade duties and responsibilities to which, without it, he would be subject ought to be treated by this Government as fraudulent.

(Instructions to Diplomatic Officers).

Rights and Privileges :—Citizens of the United States whilst residing in Peru are subject to its law and the treaties existing between the parties, and are amenable to its courts of justice for any crimes or offences which they may commit. It is the province of the judiciary to construe and administer the laws; and if this be done promptly and impartially towards American citizens, and with a just regard to their rights, they have no cause of complaint. In such cases they have no right to appeal for redress to the diplomatic representative of their country, nor ought he to regard their complaints. It is only where justice has been denied or unreasonably delayed by the courts of justice of foreign countries, where these are used as instruments to oppress American citizens or deprive them of their just rights, that they are warranted in appealing to their Government to interpose.

(Mr. BUCHANAN, Secretary of State,
February 1st, 1848).

The principle [of non-interference] does not at all interfere with the right of any state to protect its citizens or those entitled to its protection when abroad from wrongs and injuries, from arbitrary acts of oppression or deprivation of property, as contradistinguished from penalties and punishments incurred by the infraction of the laws of the country within whose jurisdiction the sufferers have placed themselves.

(Mr. MARCY, Secretary of State,
January 10th, 1854).

Another privilege of a citizen of the United States is to demand the care and protection of the Federal Government over his life, liberty, and property, when on the high seas or within the jurisdiction of a foreign Government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States.

(Justice MILLER).

Every person who voluntarily brings himself within the jurisdiction of the country, whether permanently or temporarily, is a subject to the operation of its laws, whether he be a citizen or a mere resident, so long as, in the case of the alien resident, no treaty stipulation or principle of international law is contravened.

(Mr. BLAINE, Secretary of State,
November 25th, 1881).

On general principles it is safer not to protest against local ordinances until at any rate the rights of American citizens appear to be specifically invaded.

(Mr. BAYARD, Secretary of State,
November 11th, 1885).

Citizens Passports :—A passport is the usual form in which this Government attests the nationality of citizens of the United States to a foreign Government.

(Mr. FRELINGHUYSEN, Secretary of State,
November 9th, 1883.)

Passports are *prima facie* evidence of the individual's right as a citizen to the protection of the Government which issues them, and a special responsibility rests upon the Government that disregards such evidence. The system, in fact, requires the issuing Government to demand for the bearer such treatment and protection as it gives *e converso* to aliens within its jurisdiction, and binds the other to respect the evidence which has been thus furnished.

(Mr. BAYARD, Secretary of State,
May 19th, 1886).

The oath [or affirmation] of allegiance to the United States will be required in all cases.

(Instructions to Diplomatic Officers).

A passport is good for two years from its date and no longer.
(*Ibid*).

Upon that subject I have to inform you that applicants at the Department are uniformly advised that a passport is good for two years from its date, and no longer; and that persons applying to an American representative abroad will be required to furnish satisfactory evidence that they are still entitled to protection as citizens of the United States. It is considered that an indefinite residence abroad might be quite as much encouraged by the possession of a passport good for an indefinite period, as by the operation of the rule which forces the party to submit his case anew to the careful scrutiny of the legation as often as once in two years, with suitable evidence bearing upon his claim to continued protection.

(Mr. EVARTS, Secretary of State,
February 5th, 1878).

The Department's general rule is simply that the evidence of citizenship which shall entitle a person to protection abroad is identical with the evidence upon which a passport can be issued, and the two propositions are usually merged by requiring

the applicant to take out an American passport if he does not already possess one, to do which the usual statements under oath or affirmation are necessary, including a declaration of allegiance. The Department has wisely established the uniform regulation that a United States passport shall not issue to a citizen at home or abroad without evidence that he bears the due allegiance of a citizen to the Government whose protection he claims.

(Mr. SHERMAN, Secretary of State,
August 12th, 1897).

Travelling Permits :—The Chinese [Japanese] certificates are at the most merely transit passes.

We have, however, decided many times, that no such pass or certificate, which carries on its face recognition of the bearer's nationality, can be issued in lieu of a regular passport as prescribed by statute.

The true solution would seem to be to provide for the issuance by the consuls of a form of limited-transit certificates, but only on presentation of a passport previously issued by the Legation, or upon filling a duly attested application for a passport with evidence of citizenship accompanied by the legal fees.

(Mr. FRELINGHUYSEN, Secretary of State,
January 19th, 1885).

The endorsement by the Legation of an American citizen applying for a Japanese travelling permit must necessarily depend on the proof of his citizenship.

(Mr. SHERMAN, Secretary of State, August 12th, 1897).
[See above, under *Passports*.]

Women and Children :—When the applicant for a passport [citizen's] is accompanied by his wife, minor children, or by a servant who is a citizen of the United States, it will be sufficient to state in the passport the names of such persons and their relationship to or connection with him.

A separate passport should be issued to each person of full age not the wife or servant of another with whom he or she is travelling. (Instruction to Diplomatic Officers).

Note.—Unmarried women of full age apply for passports in the same form as men.

All children born out of the limits and jurisdiction of the United States whose fathers were at the time of their birth citizens thereof are citizens of the United States ; but the rights of citizenship do not descend to children whose fathers never resided in the United States. That the citizenship of the father descends to the children born to him when abroad is a generally acknowledged principle of international law.

(Revised Statutes, Section, 1993).

Marriages:—A consular officer of the United States has no power to celebrate marriages in a Christian country between citizens of the United States unless specifically authorized by the laws of the country to do so. In non-Christian countries his authority to perform this rite is not sufficiently well established and defined in the jurisprudence of the United States to justify action upon it. It is deemed safer to forbid consular officers, and they are hereby forbidden, to solemnize marriages in any case.

A consular officer may, when requested, be an official witness of the ceremony of marriage where one of the contracting parties is a citizen of the United States. In all cases of marriage in the presence of a consular officer he shall give to each of the parties a certificate of such marriage, and shall also send forthwith a certificate of such marriage to the Department of State.

(Consular Regulations, 1896).

Personal Effects of Citizens Dying Abroad:—It is made the duty of a consular officer, where the laws of the country permit, to take possession of the personal estate left by any citizen of the United States, other than seamen belonging to any vessel, who shall die within their consulate, leaving

there no legal representative, partner in trade, or trustee by him appointed to take care of his effects.

Note.—This applies to all cases of citizens dying intestate.

When any such citizen so dying appoints, by any lawful testamentary disposition, any other person than such officer to take charge of and manage such property, it shall be the duty of the officer, whenever required by the person so appointed, to give his official aid in whatever way may be necessary to facilitate the proceedings of such person in the lawful execution of his trust.

(Consular Instructions, 1896).



